

WHITE PAPER
respecting a
FINANCIAL CONSUMERS ACT

Hon. Dennis Anderson
Minister of Consumer and Corporate Affairs

June 1989

Alberta
CONSUMER AND
CORPORATE AFFAIRS

The Financial Consumers Act

AN INTRODUCTION

The financial marketplace has changed rapidly over the past few years, and consumers are faced with many pressures when making critical investment decisions affecting their future. There are many new products with different names and promises. There is a blurring of the lines between financial institutions; for example, banks now own securities firms and insurance companies sell mutual funds.

In an apparent effort to guide consumers through the financial maze, an increasing number of financial advisors has emerged. The consumer is not always clear about the qualifications or interests of the "advisor" and has no assurance that advice is unbiased. Furthermore, the buyer of a financial product is sometimes unable to measure the risk of the investment--is it insured, and if so under what conditions?

Albertans have over \$60 billion invested in financial institutions, and are very concerned that there be a fair and honest marketplace in which they can operate. They also want more confidence when dealing in the marketplace, which means both new tools to assist them, and some new rules to ensure that they are better protected.

A marketplace is neither good nor bad. It is only a place to do business. It is the sellers and buyers who determine whether business is conducted fairly and honestly.

The focus of this draft legislation is therefore on people and their knowledge. The legislation is intended to make the nature of the risk apparent to buyers, and requirements for the standards of sellers, evident to all.

In 1986 the department of Consumer and Corporate Affairs began a review of the financial marketplace and in early 1987 formed a Ministerial Advisory Committee on Fair Dealing in Consumer Savings and Investments. The mandate of the committee was to examine consumer needs in the rapidly changing marketplace, and to make recommendations which the department could consider in developing a plan to assist financial consumers. The committee reported in January of 1989, and their document, **A Blueprint For Fairness**, indicated that improved safeguards were required.

The Financial Consumers Act is an important step in the Government's plan to improve safeguards for financial consumers. Since January we have established task forces with government, consumer and industry representatives to look at both the regulation of financial planners and the provision of better education and information materials to consumers.

The Financial Consumers Act is part of the Government's commitment to maintain the integrity of the financial marketplace. Other recent and planned initiatives include amendments to the **Insurance Act** and the **Securities Act**, and changes to Credit Union and Loan and Trust Corporations legislation.

The Financial Consumers Act is not institutional legislation--it does not deal with the solvency or management of financial corporations. This proposed Act deals with sales of financial products, by establishing rules for the disclosure of information to consumers, by setting standards of conduct for financial advisors and sellers, and by promoting fair and honest relationships between consumers and businesses.

The attached draft is based on the following principles:

- (a) full disclosure of the costs and charges for financial products and/or advice
- (b) use of plain language
- (c) standards for businesses and individuals selling financial products and/or advice
- (d) confidentiality of use of client information
- (e) truthful and honest advertising
- (f) practical consumer remedies, such as dispute resolution, class action and some rescission capability
- (g) adequate penalties and disciplinary sanctions

These principles have been presented in a legislative format so that the reader can see how they might appear in legislation. The final form will await input from consumers.

This Bill is drafted in such a way as to make it easily understood. Alberta Consumer and Corporate Affairs encourages public commentary on the draft legislation. Your input will enable the Minister to prepare a more detailed legislative draft for consideration by Government.

Comments should be forwarded to the Minister of Consumer and Corporate Affairs, the Honourable Dennis Anderson, Box 1616, Edmonton, Alberta, T5J 2N9, and labelled "Financial Consumers Act".

DRAFT BILL
for the
FINANCIAL CONSUMERS ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

PART 1

GENERAL

Definitions

1 In this Act,

(a) "charge" means any service, transaction, activity, finder, broker or other fee charged by a supplier in relation to a financial product;

(b) "commitment" means

(i) the entry into a contract by a consumer for the purchase of a financial product, or

(ii) the payment of money by a consumer for the purchase of a financial product,

whichever occurs first;

(c) "consumer" means a person who



- (i) purchases a financial product,
 - (ii) seeks or receives financial advice, or
 - (iii) is approached by another person who offers to sell financial products or to provide financial advice, or both;
- (d) "financial advice" means any information, opinion or recommendation relating to a financial product;
- (e) "financial advisor" means a person who provides financial advice to consumers for remuneration that is not related to the sale of any financial product;
- (f) "financial product" means any investment or deposit designed for financial return or security and includes a life insurance policy that has an investment component, but does not include an investment
- (i) in a private company as defined in the *Securities Act*,
 - (ii) in real property, or
 - (iii) in a chattel;
- (g) "financial transaction" means the purchase of a financial product by a consumer;
- (h) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (i) "sell" includes promoting a sale;
- (j) "salesperson" means a person who sells financial products to consumers for remuneration that is directly dependent on the sale of the financial products;

(k) "supplier" means a person who makes a financial product available to consumers and includes the employees of a supplier who receive remuneration that is not related to the sale of any financial product.

Matters to be considered

2 In exercising any authority or making any decision under this Act, a Court and all persons shall consider the following:

(a) this Act is intended to encourage the establishment of a fair financial marketplace;

(b) suppliers, salespersons, financial advisors and consumers have responsibilities in the financial marketplace;

(c) financial transactions are subject to fair and equitable standards of conduct.

Waiver

3 Any release or waiver by a person

(a) of any rights or benefits given by this Act, or

(b) of any of the requirements of this Act,

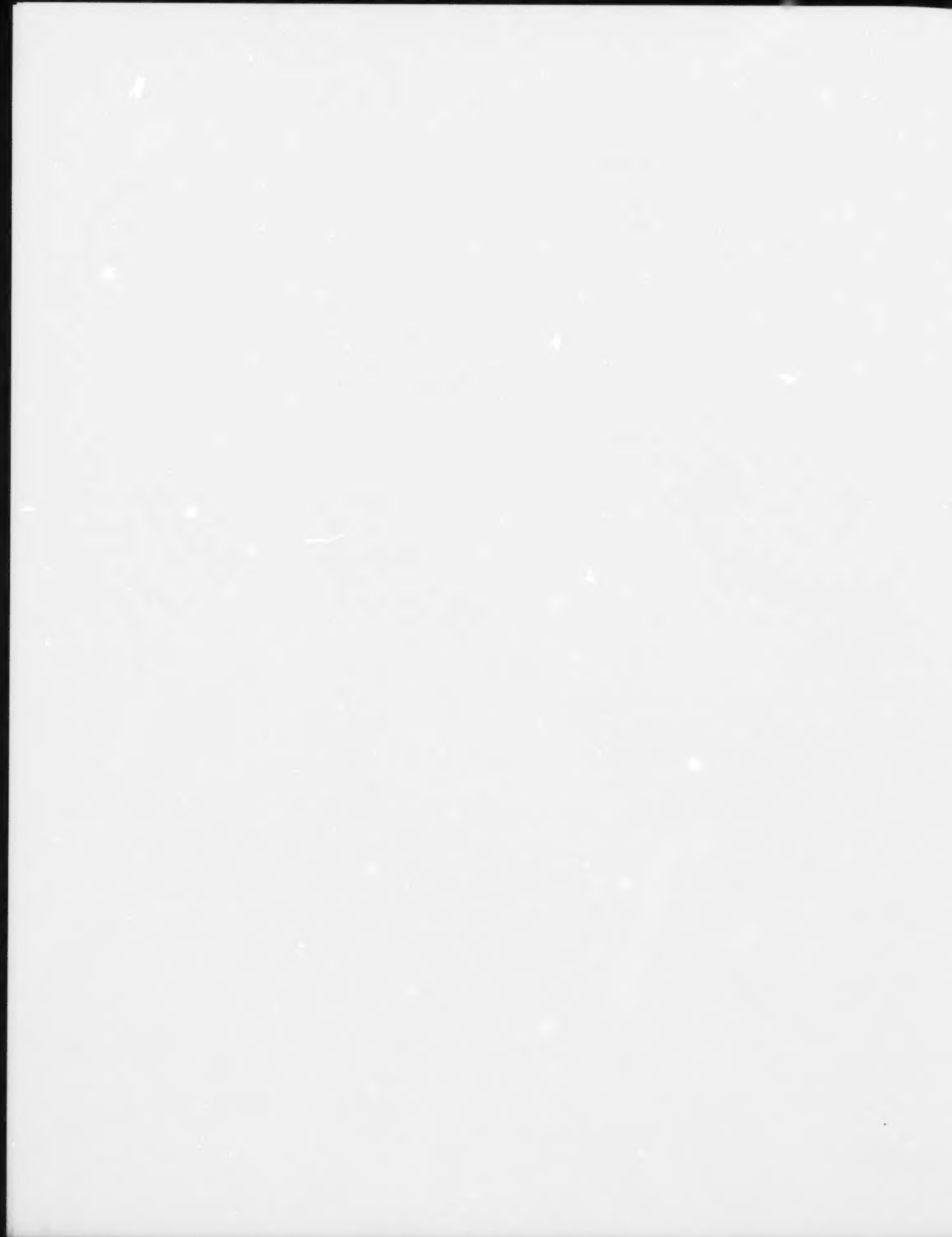
is void.

Application

4 This Act applies to

(a) suppliers,

(b) salespersons,



- (c) financial advisors, and
- (d) consumers.

PART 2

CONSUMER RESPONSIBILITIES

Duties of consumer

5 A consumer who is considering the purchase of a financial product has the following responsibilities:

- (a) to seek out relevant information relating to the financial product;
- (b) to act reasonably when making the decision to purchase a financial product;
- (c) on purchasing a financial product from a supplier or salesperson, to promptly inform the supplier or salesperson of any problem relating to the financial product and to seek appropriate redress;
- (d) to attempt to mitigate any loss or damage incurred by the consumer relating to the financial product.

PART 3

SUPPLIER, SALESPERSON AND FINANCIAL ADVISOR RESPONSIBILITIES

Qualifications of salespersons and financial advisors

6 No person shall provide financial advice or sell a financial product to a consumer or purport to have any authority to provide financial advice or to sell a financial product to a consumer unless he meets the qualifications prescribed in the regulations.

Prescribed terminology

7 A supplier, salesperson or financial advisor shall use the terminology prescribed in the regulations when describing, selling or providing financial advice in respect of financial products.

Financial advice

8(1) A financial advisor shall disclose to a consumer to whom he is providing financial advice, at the time the advice is given, the following information:

- (a) the qualifications of the financial advisor;
- (b) any interest that the financial advisor has in the financial product in respect of which the advice is given or in the supplier of the financial product;
- (c) any factor that has placed or may place the financial advisor in a position in which his own interests may conflict with the interests of the consumer.

(2) A financial advisor shall provide the information referred to in subsection (1) in writing and may provide the information on a preprinted form.

Purchase of financial product

9 Before a commitment is given by a consumer to purchase a financial product, the supplier or the salesperson, as the case may be, of the financial product shall disclose to the consumer, in the form prescribed in the regulations, the following information:

- (a) the name of the supplier of the financial product;

(b) the initial and other charges to the consumer relating to the financial product;

(c) whether the financial product is covered by a plan, program or fund that compensates consumers for losses associated with the financial product, including

(i) the name of the company or group that administers the plan, program or fund,

(ii) the types of losses that are covered by the plan, program or fund,

(iii) the limits on the coverage,

(iv) the rate of interest, if any, that is paid by the plan, program or fund on money given to a supplier by a consumer, between the date on which the losses were incurred and the date on which a claim is paid by the plan, program or fund;

(d) any factor that has placed or may place the supplier or salesperson in a position in which his own interests may conflict with the interests of the consumer;

(e) if the sale is made by a salesperson, any direct or indirect remuneration that the salesperson may receive as a result of promoting or selling the financial product.

Information

10(1) Any information that is required to be disclosed under this Act to a consumer by a supplier or salesperson relating to the sale of a financial product shall be complete, understandable and true.

(2) Any information disclosed by a supplier or salesperson that is in addition to the information required to be disclosed under this Act shall



not contradict, obscure or detract from the information required to be disclosed under this Act.

Documentation

11(1) Any document that a supplier, salesperson or financial advisor requires a consumer to sign shall be written in plain language that can be readily understood by a consumer.

(2) On the completion of a document referred to in subsection (1), the supplier, salesperson or financial advisor, as the case may be, shall immediately provide a copy of the document to the consumer.

Warranty

12(1) If a consumer makes known to a supplier or salesperson the particular purpose for which a financial product is sought and indicates, expressly or by implication, that the consumer is relying on the skill or judgment of the supplier or salesperson when making a decision regarding the purchase of a financial product, there is an implied warranty that the financial product is reasonably fit for that purpose.

(2) A consumer who suffers a loss or damage as a result of the breach of an implied warranty by a supplier or salesperson may maintain an action against the supplier or salesperson for damages for breach of the warranty, but may not return the financial product and treat the financial transaction as rescinded.

Prohibition re misleading representation

13(1) No supplier, salesperson or financial advisor shall make a representation or conduct himself in a way that deceives or misleads or might reasonably have the effect of deceiving or misleading a consumer who is receiving financial advice or purchasing a financial product from the supplier, salesperson or financial advisor.

(2) For the purposes of subsection (1), a representation or conduct that deceives or misleads or might reasonably have the effect of deceiving or misleading a consumer includes but is not limited to the following:

(a) subjecting a consumer to undue pressure to purchase a financial product;

(b) taking unfair advantage of a consumer who does not understand the financial transaction or financial advice;

(c) representing that a financial product has sponsorship, approval, performance characteristics or benefits that it does not have or cannot reasonably be expected to have;

(d) representing that the supplier, salesperson or financial advisor has sponsorship, approval, status, affiliation, connection or qualifications that he does not have;

(e) approaching a consumer with the intention of selling a financial product to the consumer without telling the consumer of that intention;

(f) representing that the sale of a financial product confers rights, remedies or obligations when it does not do so;

(g) representing that a financial product will perform in a way that is not based on factual, current and reasonable information.

Financial statements

14(1) A consumer who is considering the purchase of a financial product may request the financial statements of the supplier of the financial product and, on receipt of a request and before a commitment is given by the consumer to purchase the financial product, the supplier shall provide to the consumer a copy of the financial statements of the supplier in accordance with subsection (2).



(2) Financial statements provided under subsection (1) shall be

(a) the most recent audited financial statements of the supplier with the auditor's report on those statements, and

(b) the most recent quarterly or semi-annual financial statements of the supplier.

Prohibition re consumer funds

15(1) No salesperson shall accept from a consumer for the purchase of a financial product any payment that is not made payable to the supplier of the financial product.

(2) Subsection (1) does not apply to a salesperson who meets the requirements prescribed in the regulations.

Use of consumer information

16(1) No supplier, salesperson or financial advisor may use any name, address or telecommunications number or any other information relating to the business or personal affairs of a consumer given to him by the consumer during the course of receiving financial advice or while purchasing a financial product except as may be required to provide the financial advice or to sell the financial product.

(2) Subsection (1) does not apply if the consumer provides a consent that constitutes a specific and not a general authorization for the release of information referred to in subsection (1).

(3) A consumer shall provide a consent referred to in subsection (2) in a separate document stating

(a) the information to be released, and

(b) to whom and for what purpose it is to be released.

(4) Subsection (1) does not apply to a supplier, salesperson or financial advisor who provides information referred to in subsection (1) relating to a consumer

(a) to a credit grantor as defined in the *Consumer Credit Transactions Act*, or

(b) to a credit bureau or similar office

to determine the creditworthiness of that consumer.

Prohibition re tied selling

17(1) No supplier or salesperson shall engage in tied selling.

(2) In this section, "tied selling" means any practice whereby a supplier or salesperson, as a condition of selling a financial product to a consumer, requires the consumer to purchase another product or service from the supplier or salesperson.

Responsibilities continue

18 The failure by a consumer to carry out any responsibility imposed on the consumer under Part 2 relating to a financial product does not relieve a supplier or salesperson of the financial product from any responsibility imposed on the supplier or salesperson under this Part.

PART 4

REMEDIES

Rescission

19(1) A consumer may, not later than 5 days after giving a commitment to purchase a financial product, rescind the financial transaction by providing notice in writing

(a) to the salesperson, if any, who sold the financial product to the consumer, and

(b) to the supplier of the financial product.

(2) Subsection (1) applies only to

(a) financial products that are in a registered retirement investment fund that is not self-administered, and

(b) financial products that are in a registered education savings plan.

(3) Before a consumer gives a commitment to purchase a financial product referred to in subsection (2), the supplier or salesperson of the financial product shall provide to the consumer an address for the supplier and the salesperson at which notice under subsection (1) may be provided.

(4) A consumer who rescinds a financial transaction in accordance with this section is entitled to receive from the supplier of the financial product a refund of the money paid by the consumer to purchase the financial product.

Dispute resolution

20 A consumer who suffers loss or damage as a result of a contravention of this Act or the regulations may institute arbitration proceedings in accordance with the regulations.

Recovery of loss

21(1) A person who suffers loss or damage as a result of a contravention of this Act or the regulations may bring an action to recover damages.



(2) No person may institute an action for damages under this section or section 22 later than 6 years after the person entitled to bring the action became aware of the loss or damage.

Class action

22 If 2 or more persons have a common interest in the subject of an intended action under section 21, one or more of those persons may sue or be sued or may be authorized by the Court to defend on behalf of or for the benefit of all.

Authority of Court

23 In an action under section 21 or 22, the Court may make any order that it considers appropriate.

PART 5

ADMINISTRATION

Appointment of staff

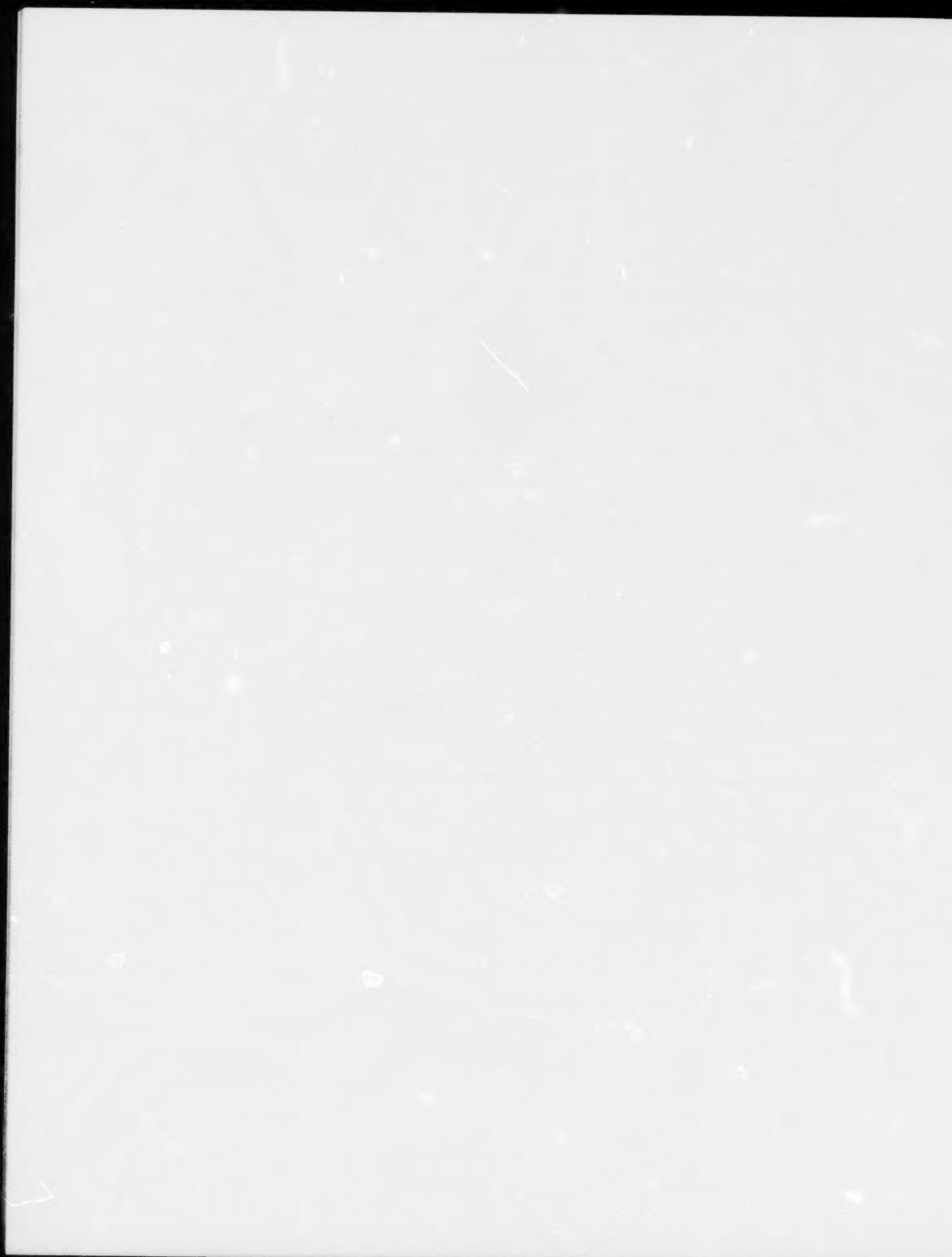
24 In accordance with the *Public Service Act*, there may be appointed any employees that are necessary for the administration of this Act.

Advisory councils

25(1) The Minister may establish advisory councils consisting of members appointed by the Lieutenant Governor in Council in accordance with the regulations.

(2) An advisory council established under subsection (1) may

(a) advise the Minister respecting educational, training, experience, examination, personal suitability and other qualifications to be met by suppliers, salespersons and financial advisors, and



(b) carry out any other duties relating to the administration of this Act assigned to it by the Minister.

(3) The Minister may authorize a delegated regulatory organization prescribed in the regulations to carry out any of the powers and duties of an advisory council and any other powers and duties assigned to it by the Minister.

Records

26(1) A financial advisor shall keep and maintain a complete record in respect of any financial advice given by him to a consumer, for not less than 6 years after the date on which the financial advice was given.

(2) A supplier or salesperson shall keep and maintain a complete record, including the original documents or a copy of them executed by the consumer, in respect of each financial transaction to which the supplier or salesperson is a party, for not less than 6 years after the commitment was given by the consumer to purchase the financial product.

PART 6

MISCELLANEOUS

Offence

27(1) A supplier, salesperson or financial advisor who fails to comply with this Act or the regulations is guilty of an offence and liable

(a) in the case of a corporation, to a fine of not more than \$50 000, and

(b) in the case of an individual, to a fine of not more than \$10 000.

(2) If a corporation has failed to comply with this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in that

failure to comply with this Act or the regulations is guilty of an offence and is liable to a fine of not more than \$10 000 whether or not the corporation has been prosecuted or convicted for the failure to comply with this Act or the regulations.

(3) A prosecution under this section may be commenced not later than 6 years after the commission of the offence.

Regulations

28 The Lieutenant Governor in Council may make regulations

- (a) respecting terminology to be used by suppliers, salespersons and financial advisors to describe, promote or sell financial products and respecting any restrictions on the use of that terminology;
- (b) respecting qualifications to be met by persons who wish to provide financial advice or sell financial products to consumers;
- (c) respecting disciplinary proceedings that may be taken against persons who provide financial advice or sell financial products;
- (d) prescribing the form of disclosure for the purposes of section 9;
- (e) respecting requirements to be met by salespersons for the purposes of section 15(2);
- (f) respecting arbitration procedures;
- (g) respecting the appointment of members of advisory councils;
- (h) prescribing delegated regulatory organizations for the purposes of section 25(3);
- (i) amending the definition of "financial product".



Coming into force

29 *This Act comes into force on Proclamation.*